

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MIRANDA CAPELES,

Defendant-Appellant.

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UNPUBLISHED  
February 28, 2006

No. 258012  
Oakland Circuit Court  
LC No. 04-194666-FH

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right following his jury trial conviction of possession of 50 or more, but less than 450, grams of cocaine, MCL 333.7403(2)(a)(iii). Defendant was sentenced as a third habitual offender to seven to forty years in prison for the possession of cocaine conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence presented at trial was purely circumstantial and insufficient to sustain his conviction. We disagree. When reviewing a claim of insufficiency of the evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence “in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.” *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). In doing so, “circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime.” *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

Under Michigan jurisprudence, the offense of possession of a controlled substance requires proof that the defendant had actual or constructive possession of the substance. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Since there is no dispute that defendant was not in actual possession of the cocaine, the primary issue on appeal is whether there is sufficient evidence to find that defendant was in constructive possession of the cocaine. This Court has found that a person can possess a controlled substance, in the absence of physical possession, by exercising dominion or control over the drug with knowledge of its presence and character. *People v McKinney*, 258 Mich App 157, 165-166; 670 NW2d 254 (2003). Although constructive possession can be inferred from the totality of the circumstances, mere presence at the location from which drugs are found is insufficient to establish constructive possession. See

*People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). It is also well settled that possession need not be exclusive; a person may jointly possess a controlled substance with another. *Id.*

Defendant's argument, that the evidence presented by the prosecution failed to directly connect him to the cocaine, and mere presence at the location from which the cocaine was found does not equate to constructive possession, is without merit. Defendant claims that there was no evidence presented that proved he knew the cocaine was located in the garage or, in the alternative, that he had dominion or control over the cocaine that was found in the garage; however, the evidence suggests otherwise. Defendant and a man identified as Jose Malaeva were observed entering the garage, where the cocaine was seized, on several occasions throughout the two-day surveillance. The two men congregated in the front yard of the house and made frequent trips to the garage; the trips were short in duration, between twenty and thirty seconds in length. Defendant was observed entering the garage numerous times, yet he was unable to explain the purpose for the trips. During questioning after his arrest, defendant gave inconsistent statements regarding his trips to the garage. At one point, defendant answered that he never went into the garage. The garage was kept in an extremely dirty and inhabitable condition. The majority of the garage was covered in dirt except for the two spots where the cocaine was found, yet defendant continuously entered the garage. In addition, defendant was in close proximity when Malaeva was observed conducting a "hand to hand" drug transaction. Defendant was seated next to Malaeva when a man in a pickup truck approached the front yard, he watched as Malaeva went into the garage and returned from the garage to conduct the transaction.

Defendant argues that the garage was open to the public and other people had just as much, if not more, access to and control over the garage than he did. Although defendant claims that other people had equal, if not superior, rights to enter the garage than he did, they were never seen entering the garage during the surveillance. Defendant and Malaeva were the only individuals seen utilizing the garage, even though other people frequented the house. Defendant further argues that his fingerprints were not found on the bags of cocaine. However, the lack of fingerprint evidence in this case is not determinative, since it is not uncommon for fingerprint evidence to be lacking in cases such as the present case.

Although it is well settled that "mere presence" at the location from which drugs are found does not equate with possession, defendant's continuous presence at the location from which the drugs were seized, coupled with his actions and inconsistent statements, leads to a reasonable inference of "dominion and control" for purposes of establishing constructive possession. The evidence, viewed as a whole, and in the light most favorable to the prosecution, was sufficient for a reasonable jury to conclude that defendant was in possession of the cocaine.

Affirmed.

/s/ Stephen L. Borrello  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald